

REMARKS

Applicants note that form 1449 dated November 03, 2005 was not initialed by the Examiner, but that it was received by the Office as it is listed in PAIR. Applicants respectfully request consideration of all of the references, and return of the fully initialed form 1449.

In response to the Office Action mailed on November 28, 2006, Applicants amended claims 1, 20, 22 and 30, and cancelled claims 3, 4 and 21. Accordingly, claims 1, 2, 5-8, 11-20, 22-30, and 41-58 are presented for examination.

The Examiner rejected claims 1-8, 11-30, and 41-58 under 35 U.S.C. §102(b) as being anticipated by Mangin, PCT Publication No. WO 01/66016 ("Mangin") or under 35 U.S.C. §103(a) as being unpatentable over Mangin. Applicants cancelled claims 3, 4 and 21, so the rejection of these claims should be withdrawn. As amended, claims 1, 2, 5-8, 11-20, 22-30, and 41-58 cover particles with an average pore size in an interior region that is greater than an average pore size at a surface region. Mangin does not explicitly disclose such particles. Nor does Mangin inherently disclose the particles covered by claims 1, 2, 5-8, 11-20, 22-30, and 41-58. As stated by the United States Court of Appeals for the Federal Circuit Electro Sys. S.A. v. Cooper Life Sciences, 34 F.3d 1048, 1052 (Fed. Cir. 1994):

The mere fact that a thing *may result* from a given set of circumstances is insufficient to prove anticipation. (citations omitted; emphasis original).

Rather, one asserting that a reference inherently discloses certain subject matter must prove that the features are:

necessarily present [in the prior art reference] and that it would be so recognized by persons of ordinary skill. (Id.)

Here, the Examiner has not satisfied the requisite legal standard because the Examiner has not established that a person of ordinary skill in the art would recognize that Mangin necessarily discloses particles wherein the average pore size in the interior region is greater than

the average pore size at the surface region. To the contrary, based on Figs. 1A and 1B of Mangin, it would appear that the surface region of Mangin's particle has more larger pores than the interior region of Mangin's particle, indicating that the average pore size in the interior region of Mangin's particle is less than the average pore size at the surface region. Thus, Mangin does not disclose the subject matter covered by claims 1, 2, 5-8, 11-20, 22-30, and 41-58.

Nor is there any suggestion to modify Mangin to provide the particles covered by claims 1, 2, 4-8, 11-20, 22-30, and 41-58. For example, according to Mangin his particle satisfies his perceived need. (See, e.g., Mangin at Abstract and page 4, lines 1-page, 5, line 31.) After reading this, a person of ordinary skill in the art would not have been motivated to modify Mangin's particles to provide the particles covered by claims 1, 2, 5-8, 11-20, 22-30, and 41-58.

In view of the foregoing, Applicants request reconsideration and withdrawal of the rejection of claims 1, 2, 5-8, 11-20, 22-30, and 41-58.

Applicants believe the application is in condition for allowance, which action is requested. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: February 15, 2007

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